

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Statcom Communications Corp.
1324 Forest Avenue
Staten Island, New York 10302

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File No. EB-00-PA-088
NAL/Acct. No. X3240003

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: August 8, 2000

By the District Director, Philadelphia Office, Enforcement Bureau:

I. Introduction

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Statcom Communications Corp. (“Statcom”), the licensee of Land Mobile radio station WPHC348, has apparently violated Section 90.403(e) of the FCC Rules (the “Rules”).¹ The violation is failure to take effective measures to avoid causing harmful interference to stations WPBV410 and WPDU414 on the frequency 461.525 MHz. We conclude that Statcom is apparently liable for forfeiture in the amount of four thousand dollars (\$4,000).

II. Background

2. Since 1993, MPS Communications, Inc. (“MPS”) has been licensed to operate a repeater station on the frequency 461.525 MHz in Trenton, New Jersey and Neptune, New Jersey under the Land Mobile Radio licenses WPBV410 and WPDU414, respectively. However on June 17, 1997, the Commission issued Statcom a license to operate a repeater station on the same frequency from the World Trade Center in New York City. During the month of February 1998, Steve Budassi filed a complaint with the Philadelphia Office alleging that MPS and its customer, Delaware Valley Bus Lines (“Delaware”), were experiencing harmful interference to their radio communications on the frequency 461.525 MHz.² Mr. Budassi claimed that the transmissions from Statcom completely override the transmissions from the MPS stations in the areas of central, and northern New Jersey.

3. During the morning of March 18, 1999, two FCC agents from the Philadelphia Office investigated Mr. Budassi’s complaint made in person on February 16, 1999. On numerous occasions that morning, the FCC agents observed Statcom, WPHC348 begin transmitting on the frequency 461.525 MHz while the MPS stations WPBV410 and WPDU414 were already active. The FCC agents

¹ 47 C.F.R. § 90.403(e).

² Mr. Budassi filed a similar complaint with the Personal Communications Industry Association (“PCIA”) on November 22, 1995.

Federal Communications Commission

determined that Statcom's signal was of sufficient strength to blanket the signals from both MPS stations in their areas of operation in Mercer and Monmouth Counties NJ, and north.³ As a result, Statcom was causing harmful co-channel interference to MPS' radio communications

4. On October 8, 1999, the District Director of the Philadelphia Office issued an Official Notice of Violation ("NOV") to Statcom for the harmful interference caused to MPS , in violation of Section 90.403(e) of the Rules. On October 28, 1999 Statcom submitted a response to the NOV stating that it had taken additional steps to comply with Sections 90.403(e) of the Rules as directed in the NOV. Statcom stated that it would ensure that the Allen Luxury Car Service ("Allen"), its customer on the WPHC348 system, would take all reasonable measures to effectively monitor for transmissions from the MPS stations prior to transmitting.

5. By letter dated January 21, 2000, Steve Budassi submitted another complaint to the Philadelphia Office stating that MPS and Delaware continue to seek relief from the harmful interference caused by the Statcom station WPHC348. In response, FCC agents from the Philadelphia Office conducted further investigation into Mr. Budassi's complaint. The FCC agents again confirmed that Statcom was causing harmful co-channel interference to MPS' radio communications because MPS was unable to clearly hear the transmissions from its repeater stations when Statcom began transmitting. On February 25, 2000 and February 26, 2000, an FCC agent from the New York City Office inspected station WPHC348. The FCC agent observed that the Statcom station WPHC348 did not have installed effective monitoring equipment capable of detecting the transmissions on the frequency 461.525 MHz from the MPS stations.

6. On March 16, 2000, the District Director of the Philadelphia Office issued a second NOV to Statcom for the harmful interference caused to the MPS stations in violation of Section 90.403(e) of the Rules. The Philadelphia Office suggested that Statcom install monitoring equipment on station WPHC348 capable of detecting both MPS stations. On March 22, 2000, Statcom filed a response to the NOV stating the installation of a repeater monitor receiver at the Statcom transmitter site on One World Trade Center will not resolve MPS's problem. Statcom added that it had hired Antenna Site Technology to prepare an evaluation of the optimal method for responding to the Commission's directive. Subsequently, on April 27, 2000, Statcom submitted a letter to the Philadelphia Office stating that it would install a repeater monitor receiver at the control station of its customer, Allen Luxury Car Service. Statcom also expressed its concern about the inability of any receiver to monitor a station located in the Trenton, New Jersey area from such a heavily congested site as the One World Trade Center.

7. On May 2, 2000, FCC agents from the Philadelphia Office monitored the frequency 461.525 MHz from the roof of the One World Trade Center and were able to receive the transmissions from the MPS stations WPBV410 and WPDU414. By letter dated May 5, 2000, the Philadelphia Office informed Statcom of the agents' May 2, 2000 findings and reminded Statcom that it was still in violation of Section 90.403(e) of the Rules.

8. On May 31, 2000 at 10:30 a.m., an FCC agent from the Philadelphia Office detected the Statcom station WPHC348 begin transmitting on the frequency 461.525 MHz while the MPS station WPBV410 was already active. The FCC agent observed that Statcom's co-channel transmission caused harmful interference to Delaware's radio communications in progress, in violation of Section 90.403(e) of the Rules.

³ Both MPS stations WPBV410 and WPDU414 are authorized an area of operation of 64 kilometers radius (40 miles) centered on their transmitter site.

III. Discussion

9. Section 90.403(e) of the Rules requires that licensees shall take reasonable precautions to avoid causing harmful interference. This includes monitoring the transmitting frequency for communications in progress and such other measures as may be necessary to minimize the potential for causing interference. The FCC agents have confirmed that the customers of the MPS stations WPBV410 and WPDU414 experience interference on the frequency 461.525 MHz in the stations' authorized areas of operation in Mercer and Monmouth Counties NJ, and north when Statcom transmits simultaneously. Specifically, throughout the morning of February 17, 2000 and on May 31, 2000 at 10:30 a.m., the Statcom station WPHC348 began transmitting on the frequency 461.525 MHz while the MPS stations WPBV410 or WPDU414 were already active. The FCC agents witnessed that Statcom's co-channel transmissions caused harmful interference to radio communications of MPS and Delaware in progress. The Philadelphia Office issued a NOV to Statcom on October 8, 1999 and on March 18, 2000 for violation of Section 90.403(e) of the Rules. However, Statcom has not taken effective measures to avoid causing harmful co-channel interference to stations WPBV410 and WPDU414.

10. Based on the evidence before us, we find that Statcom willfully⁴ and repeatedly⁵ violated Section 90.403(e) of the Rules. The Commission's *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("Policy Statement"), sets the base amount for causing harmful interference at four thousand dollars (\$4,000). In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("the Act"),⁶ that include the nature, circumstances, extent and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the Policy Statement and statutory factors to the instant case, we believe that a monetary forfeiture of four thousand dollars (\$4,000) is warranted for the violation.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁷ and Sections 0.111, 0.311 and 1.80 of the Rules⁸ Statcom Communications Corp is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of four thousand dollars (\$4,000) for failure to effectively monitor for communications in progress prior to transmitting, in violation of Section 90.403(e) of the Rules.

⁴ Section 312(f)(1), which also applies to Section 503(b), provides: [t]he term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provisions of the Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States. See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

Federal Communications Commission

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Statcom Communications Corp. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. X3240003.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. X3240003.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.⁹

17. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Statcom Communications Corp., 1324 Forest Avenue, Staten Island, New York 10302.

FEDERAL COMMUNICATIONS COMMISSION

John E. Rahtes
District Director
Philadelphia Office

⁹ See 47 C.F.R. § 1.1914.